



North Carolina Department of Health and Human Services

2001 Mail Service Center • Raleigh, North Carolina 27699-2001

Tel: 919-733-4534 • Fax: 919-715-4645

Beverly Eaves Perdue, Governor

Lanier M. Cansler, Secretary

February 20, 2009

Mark Ash, Esq.
Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, LLP
P.O. Box 2611
Raleigh, NC 27611

RE: EDS Protest of Award of Replacement MMIS Contract
Decision of DHHS

Dear Mr. Ash:

Electronic Data Systems, LLC ("EDS") protested the State's award of its Replacement MMIS Contract (RFP No. 30-DHHS 1228-08-R) to Computer Sciences Corporation ("CSC") in a Protest Meeting which took place on February 12, 2009. At the conclusion of the Protest Meeting, EDS requested the North Carolina Department of Health and Human Services ("DHHS") to terminate the Contract with CSC and to either (1) award the Replacement MMIS Contract to EDS or (2) re-solicit bids on the Replacement MMIS Contract.

In accordance with 9 NCAC 6B.1102, this letter sets forth DHHS's decision in response to EDS's request. DHHS has determined that the arguments put forth by EDS at the Protest Meeting and in its letter of January 6, 2009 do not justify termination of DHHS's Replacement MMIS Contract with CSC.

EDS identified nine specific protest issues at the Protest Meeting. DHHS's response to the salient points asserted by EDS with respect to each of these issues is as follows:

1. DHHS Failed to Evaluate Past MMIS Performance as Required by Rules

DHHS evaluated and scored each offeror's past performance and experience. RFP Section 60.2 defines the "past performance and experience" evaluation factor as "[t]he Offeror's performance on previous projects of similar scope (e.g., health care and Medicaid-specific services)." This definition did not limit DHHS to considering project overruns only with respect to MMIS implementations or only in relation to a 10% threshold. As permitted under this broad definition, DHHS asked other customer references whether there had been cost/price or schedule overruns in other projects undertaken by the offerors. Of the previous customers contacted, more EDS customers indicated schedule overruns than did CSC customers. However, DHHS chose not to reduce the score of either offeror due to any of these overruns because DHHS could not obtain the complete information needed to evaluate each offeror's most recent replacement MMIS implementation.

In keeping with the Proposal Evaluation Plan, DHHS sought to determine whether each offeror had "successfully completed DDI as prime contractor on the most recent replacement MMIS implementation with no more than 10% growth in cost/price and schedule (including state-requested change orders)." To evaluate this aspect of past performance with regard to CSC, DHHS examined

information from the State of New York.

The New York Office of the State Comptroller (NY OSC) and the New York Department of Health (NY DOH) publicly released conflicting explanations for cost and schedule overruns in implementation of New York's replacement MMIS. While the NY OSC stated that the overruns resulted because CSC did not perform as it had agreed, NY DOH stated that a substantial portion of the overruns were the fault of the State of New York. NY DOH was the department of New York State government most directly responsible for monitoring CSC's performance and for working with CSC toward successful implementation of New York's replacement MMIS. NY DOH's ability to commit full resources to its side of the project was significantly diminished by NY DOH's need to deal with the profound aftereffects of the 9/11 terrorist attack, which took place during the term of the contract.

When North Carolina evaluators sought to resolve New York's differing assessments by requesting a corporate reference for CSC from the State of New York, New York declined to provide a reference, stating that North Carolina (or any other requestor) should not interpret New York's unwillingness to provide a reference "in any way as a negative reflection on CSC." Accordingly, the North Carolina evaluators drew no negative conclusion with regard to CSC's performance.

2. CSC Proposal Failed to Meet Critical Multi-Payer Requirement and is a Legacy System

The RFP includes extensive terms requiring development during the course of the Contract of a multi-payer MMIS meeting the State's unique requirements. The RFP does not require delivery at the outset of the Contract of a multi-payer system. CSC satisfied DHHS that CSC is capable of modifying its existing, baseline system to meet the State's multi-payer requirements.

In relation to the State of North Carolina's requirements, each offeror's existing system is a "legacy system."

3. CSC Proposal Failed to Meet Mandatory Submission Requirements

The Replacement MMIS Proposal Submission Requirements Checklist is set forth in Attachment A to the RFP's Appendix 50. As provided in RFP Section 60.1, Technical Proposals that have not been correctly completed according to the checklist "may" be deemed non-responsive to the RFP.

CSC initially submitted a Technical Proposal that lacked complete responses to two checklist items: (1) Section K was omitted, and (2) one page (out of a total of four) was missing from RFP Appendix 50, Attachment C, Exhibit #2. DHHS did not deem CSC's proposal to be nonresponsive due to the omission of Section K because the information that was to appear in Section K could be found elsewhere in CSC's initial Technical Proposal. DHHS also determined that CSC's omission of a single page from Exhibit #2 did not justify the finding that CSC's proposal was nonresponsive.

All other omissions of proposal material by CSC that EDS noted in the Protest Meeting were omissions of non-checklist items. DHHS did not deem CSC's proposal to be nonresponsive due to these omissions, just as DHHS did not deem EDS's proposal to be nonresponsive for its omission of proposal materials.

4. DHHS Failed to Document Scoring of Bids

DHHS's scoring methodology complied with 9 NCAC .0302(1)(e), which provides:

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For solicitations that include a best value ranking process, scoring and ranking may be determined by using any consistent rating methodology, including adjectival, numerical, or ordinal rankings. Relative strengths, deficiencies, weaknesses, and risks supporting the evaluation shall be documented in the contract file.

In the course of scoring the proposals, the Selection Committee reviewed over ninety-five pages of formal comments, which set forth the strengths, deficiencies, weaknesses and risks of each offeror. The conclusions set forth in these extensive comments are the reviewable basis for the Selection Committee's scoring of each evaluation factor.

DHHS scored proposals as described in the Replacement MMIS Award Recommendation document:

The process used six evaluation criteria (evaluation factors) The Selection Committee applied the definitions of a particular criterion to the weaknesses for an Offeror, and then worked towards a consensus score for that criterion based on the collective judgment of its members. The resulting score was then confirmed by majority vote of the Selection Committee.

In keeping with the above description, scoring was the result of consensus building through group discussion among the seven members of the Selection Committee, and not the result of tallying scores reached individually by Selection Committee members. The Selection Committee reached a consensus as to the relative, overall weight of each offeror's weaknesses (as reflected in the formal evaluation comments) and scored each evaluation factor accordingly. As a result, there were no "subscores" generated by individual Selection Committee members, nor were there any group-generated "subscores" for any of the evaluation factors.

5. CSC Required to be Disqualified for Use of Cansler-Fuquay Solutions and BizLogic as Subcontractors

The RFP requires offerors to provide "a statement that no assistance in preparing [its proposal] was received from any person currently or formerly employed or engaged by the State of North Carolina whose duties relate(d) to the preparation of this RFP..." CSC provided such a statement.

The personnel of Cansler-Fuquay Solutions and BizLogic identified by EDS in its award protest ceased to be employed or engaged by the State before preparation of the current RFP began. CSC's engagement of Cansler-Fuquay Solutions and BizLogic did not affect CSC's eligibility to bid on the Replacement MMIS project.

6. DHHS Erred in Evaluation of DDI Schedule

EDS asserts that, to its detriment, it was encouraged by the State to lengthen its DDI schedule while CSC was neither encouraged nor required to increase its DDI schedule.

DHHS did not mandate that offerors lengthen their schedules. Rather, DHHS required offerors to propose revised schedules that were supportable with the State's limited resources. Each offeror's subsequent solution was to lengthen its schedule.

Contrary to EDS's assertion, CSC's initial schedule was shorter than EDS's schedule. EDS's initial schedule was unrealistic because it relied on the assumption that the State would provide personnel at a level of 150 full-time equivalents, which exceeded the level of resources that the State of North Carolina could provide. When DHHS asked EDS whether it had ever worked with a state that was able

to commit so many State personnel to a replacement MMIS development project, EDS replied that it had not. Had DHHS chosen not to negotiate for schedule revisions by each offeror, CSC would have received the maximum points for “DDI Schedule” and EDS would have received fewer points. Ultimately, CSC extended its schedule more than EDS, and thus EDS’s score benefitted from the negotiation process.

7. DHHS Failed to Recognize Deficiencies in CSC Estimates of Effort

CSC provided over one thousand pages of information documenting its estimations of cost and effort. CSC’s function point analysis was only a small part of the information considered by DHHS in its evaluation of CSC’s estimates of effort. Function point analysis is but one of the methodologies that can be used to estimate the effort required by a software project.

8. Amendment to Proposed Evaluation Plan Hides True Cost of CSC System Modifications

The timing of the amendment of the Proposal Evaluation Plan was driven primarily by the need to address new, unanticipated legislative mandates and new DHHS requirements, rather than by the completion of technical scoring. The Proposal Evaluation Plan was amended prior to DHHS’s publication of the Request for Cost Proposals.

For the purpose of scoring Total Price, DHHS assumed (as reflected at all times in the RFP) that the Operations Phase Modification Pool will be spent in full during each year of operations.

The State amended the RFP to provide a flat annual sum of eight million dollars for the Operations Phase Modification Pool. The cost of the pool is not hidden.

DHHS changed the amount of the Operations Phase Modification Pool to a flat annual sum to minimize the incentive for offerors to artificially manipulate labor pricing factors in order to make their proposals appear more competitive. The change increased the likelihood that Cost Proposals would be more accurate and of less cost to the State.

9. DHHS Failed to Properly Evaluate True Bid Costs

DHHS properly evaluated the bid costs as required by RFP Section 60.2, the Request for Cost Proposals, and the Proposal Evaluation Plan.

EDS asserts that the State failed to properly evaluate the bids because the State did not include the dollar amount of each offeror’s proposed “Additional Functionality Pool” in the State’s total cost of ownership calculations.

An offeror’s indicated dollar amount for the Additional Functionality Pool is neither scored as a part of Total Price nor factored into Total Cost of Ownership because, as provided in RFP Section 30.40.1.1, “The State shall have no obligation to use any of the Replacement Phase Additional Functionality Pool labor or to pay the Vendor for non utilized pool labor.”

The amount the State may spend against the pool is totally at the State’s discretion. For this reason, each offeror’s proposed labor rates for its pool were considered in the State’s Best Value determinations, but not the total amount of each pool.

The amount of the Additional Functionality Pool is not an offeror’s projection of the cost of additional

work that the offeror believes will be required to enhance its MMIS. Rather, as stated in RFP Section 30.40.1.1, the pool amount measures the offeror's commitment to "stand ready" to provide additional services at pre-established rates. CSC committed to provide up to \$22 million in pool services at known rates. EDS committed to provide only up to \$1.3 million in pool services at known rates. EDS's more limited commitment left it free to raise rates after undertaking substantially less work.

It is the decision of DHHS in response to the Protest Meeting of February 12, 2009 to uphold award of the Replacement MMIS Contract to CSC.

DHHS thanks EDS for its participation in the Replacement MMIS procurement process and acknowledges the professionalism of EDS's representatives in conducting its protest of the contract award.

Sincerely,

A handwritten signature in cursive script that reads "Danny Stewart".

Danny C. Stewart
Assistant Secretary for Finance and Business Operations

NOTICE OF APPEAL RIGHTS

EDS may request an administrative hearing and a final decision by the State's Chief Information Officer in accordance with Article 3A of Chapter 150B of the North Carolina General Statutes and 9 N.C.A.C. 6B .1101, et seq. The request for hearing must be addressed to: CIO, ATTENTION: ITS Hearing Officer, N.C. Office of Information Technology Services at P.O. Box 17209, Raleigh, N.C. 27619-7209, or, if the request is sent by registered mail, to 3900 Wake Forest Road, Suite 104, Raleigh, N.C. 27609. The request must comply with the requirements set forth in 9 N.C.A.C. 6B .1103. The petition must be received in the N.C. Office of Information Technology Services within 10 days after this decision is served upon EDS. A copy of the petition must be served upon the Department of Health and Human Services.

CERTIFICATE OF SERVICE

I certify that I have this day served the foregoing decision upon EDS by certified mail, return receipt requested, by depositing the decision in a depository of the United States Postal Service in a postage-paid wrapper addressed as follows:

Mark Ash, Counsel for Electronic Data Systems, LLC
Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P.
P.O. Box 2611
Raleigh, North Carolina
27602-2611

A copy has also been provided to the State CIO, Mr. George Bakolia. A courtesy copy also has been provided to Mark Ash by electronic mail.

This the 20th day of February, 2009.

Allyson Lyon